Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1199

SOUTH CAROLINA REAL ESTATE COMMISSION,
RESPONDENT,

versus

R. TRIPPETT BOINEAU, PETITIONER

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF SOUTH CAROLINA

JULIAN J. NEXSEN
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No. .....

SOUTH CAROLINA REAL ESTATE COMMISSION,
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R. TRIPPETT BOINEAU, PETITIONER

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF SOUTH CAROLINA

The Petitioner respectfully prays that a Writ of Certiorari issue to review the decision of the South Carolina Supreme Court entered in this proceeding November 8, 1976, Petition for Rehearing denied December 2, 1976.

OPINIONS BELOW

The opinion of the South Carolina Supreme Court is reported at .... S. C. ...., 230 S. E. (2d) 440 and is set forth in the Appendix at p. 15. The opinion of the Court of Common Pleas for Richland County is unreported and is set forth in Appendix at p. 21.

JURISDICTION

The decision of the South Carolina Supreme Court was entered November 8, 1976. A Petition for Rehearing was filed and was denied on December 2, 1976. This Court's jurisdiction is invoked pursuant to 28 U. S. C. § 1257(3) (1970).

QUESTION PRESENTED

Whether the Petitioner was denied a fair trial and due process of law under the Constitution of the United States in the action against him under South Carolina law to revoke his Real Estate Broker's license by the Trial Court finding him guilty of misconduct with which he was not charged nor given an opportunity to defend.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides in Section 1:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF CASE

Certain written charges were made against Petitioner by the South Carolina Real Estate Commission which held an administrative hearing to determine whether Petitioner's Real Estate Broker's license should be revoked. From an adverse ruling by the Commission, the Petitioner appealed to the Court of Common Pleas, where, pursuant to Section 56-1545.21, *S. C. Code of Laws* (1976 Supp.), the

matter was tried *de novo* as an equity matter without a jury. Because the trial in the Court of Common Pleas was *de novo,* the administrative order of the South Carolina Real Estate Commission is immaterial to this petition.

On January 13, 1976 the Court of Common Pleas issued an order finding Petitioner guilty of misconduct with respect to four separate transactions and ordering the Petitioner's Real Estate Broker's license to be revoked. With respect to each transaction, the Trial Judge found the Petitioner guilty of conduct with which Petitioner asserts that he had neither been charged nor given notice or opportunity to defend. Petitioner took a timely appeal to the Supreme Court of South Carolina which issued an order on November 8, 1976 affirming the judgment of the Court of Common Pleas. A timely Petition for Rehearing was filed and was denied by the Supreme Court on December 2, 1976.

The Petitioners seeks certiorari to review the affirmance of the Court of Common Pleas by the Supreme Court of South Carolina.

THE CONSTITUTIONAL QUESTIONS WERE RAISED AND PRESERVED AT ALL STAGES

During the course of the trial, counsel for the Real Estate Commission continually urged the Court not to limit itself to the specific written charges against Petitioner. The Court ruled at that time that the trial was limited to the written charges. (Excerpt No. 4(a) from Transcript of Record, Appendix p. 35).

The Court subsequently was led into error by the position of counsel for the Real Estate Commission, however, as in its order, the Court found Petitioner guilty of misconduct with which he was not charged, nor given notice or opportunity to defend. Exceptions to such findings were taken on the appeal to the South Carolina Supreme

Court. (Excerpt No. 4(b) from Transcript of Record, Appendix p. 36).

In his Petition for Rehearing, Petitioner again raised the objection that he had been tried and found guilty of serious misconduct of which he had no notice or opportunity to defend. (See Excerpt from Petition for Rehearing, Appendix p. 38).

REASONS FOR GRANTING THE WRIT

The revocation of a professional license by which a person earns his living and to which profession he devotes his energies and occupation is a drastic and punitive action of a quasi-criminal nature. Indeed, where one has devoted his life to a profession, the revocation of his professional license may be considered a commitment to a prison without walls. It follows that when the State brings its power to bear in a revocation proceeding, the safeguards of due process must be observed.

The lack of due process accorded the Petitioner in State Court is of such an obvious and shocking nature that one can only conclude that the Court considered it was a case of the ends justifying the means.

The Supreme Court set forth in its Opinion the four written charges which pertained to the transactions in which Petitioner was found guilty of misconduct. These charges will be referred to as the Ralph Smith transaction, the Edward Riser transaction, the Lake Dogwood transaction and the Henry Ingram transaction.

The charge with respect to the Ralph Smith transaction provided:

> "6. That you did enter into a real estate transaction with one Ralph Smith, enticing him to deal with you on the basis of a financial statement which you asserted as being yours, and which reflected a net equity of $20,637,747 no/100, which financial statement

> was false and utilized for fraudulent purposes; the personal note referred to being unpaid, the property which the subject of the transaction was encumbered by you with a mortgage which was allowed to be foreclosed upon; . . ."

With regard to the Ralph Smith transaction, the South Carolina Real Estate Commission was unable to get the alleged false financial statement into evidence and the Court dismissed the charge as it related to such a financial statement. (Excerpt from Transcript No. 5(a), Appendix p. 39). Counsel for Petitioner were under the impression that this ended the charges with respect to the Smith transaction, but in its order, the Court found the Petitioner guilty of something entirely different from the charge that he induced Mr. Smith to deal with Petitioner on the basis of a false financial statement. The Court found that Petitioner placed mortgages on the property which he never intended to pay. The Court found:

> There is some contention in the record by Ralph L. Smith, Jr. that he was motivated in the transaction by reports of a financial statement showing the financial worth of R. Trippett Boineau as being Twenty Million ($20,000,000.00) Dollars. **Whether this be true or not is totally beside the point.** It is clearly evident from the record and from the facts disclosed in this transaction that R. Trippett Boineau, as President of Rockie Realty, Inc., did not at any time have any intention of repaying the financial obligation to Ralph L. Smith, Jr. and his wife or to the North Carolina National Bank. This transaction was obviously a scheme on the part of R. Trippett Boineau, President of Rockie Realty, Inc., to use the land owned by Ralph L. Smith, Jr. and his wife as a means to obtain a financial profit through the mortgaging of that property and borrowing money against that property as security without any intention of repaying the loans made to Rockie Realty, Inc. throughout the course of the

transaction. This Court believes that Mr. Boineau did not at anytime have any intention of paying the first mortgage to the North Carolina National Bank or of paying the note and second mortgage to Ralph L. Smith, Jr. and his wife. (Emphasis added.)

No attempt was made by Petitioner to prove what payments had been made on the mortgages referred to by the Trial Court because such a charge simply was not made in the written charge against Petitioner.

The charge with respect to the Edward Riser transaction provided:

> "7. That you did pledge and deliver a savings passbook to one Ed Riser as security for a $40,000.00 loan after which you filed an affidavit with American Bank and Trust stating that you had lost or misplaced your passbook and withdrew the proceeds from your account, which destroyed the security you had previously given; . . ."

In the Edward Riser transaction the charge was that Petitioner executed a false affidavit for the purpose of withdrawing funds from a savings account, thereby destroying the security of Mr. Riser who held the savings passbook as security for a loan to Petitioner. The evidence was that the only person who got money out of the passbook after the affidavit was executed was Mr. Riser who was paid in full. (Excerpt from Transcript No. 5(b), Appendix p. .). Although it was clear that the charge as made had no substance, the Court found Petitioner guilty of misconduct on the bases that he concealed from the Bank the fact that the passbook was pledged, that he concealed from Mr. Riser that money had been withdrawn from the account prior to execution of the affidavit (which finding was contrary to the testimony of Mr. Riser.) (Excerpt from Transcript No. 5(c), Appendix p. 41). Finally the Court found the whole transaction fraudulent and Petitioner guilty of overall underhanded behavior. All of these findings greatly exceeded the charge that Petitioner surreptitiously withdrew funds from a bank account with the effect of destroying the pledge of the passbook as security.

The Lake Dogwood charge provided:

> "2. That on May 30, 1972, you falsely represented to representatives of Lake Dogwood Associates, Inc., and to Leesburg Associates that in consideration of an extension of time within which to close a real estate transaction, you would pay the sum of Thirty Thousand and no/100 ($30,000.00) dollars, at which time you knew or should have known that insufficient funds were available to you to honor your commitment, all in violation of § 56-1545.16, Code of Laws of South Carolina, 1962; . . ."

In the Lake Dogwood matter, Petitioner was charged with giving a check for $30,000.00 which he represented to be good but which he knew was not good. Petitioner's contention was that he gave the check as a promise to pay and informed the principals of Lake Dogwood that the check was not funded. Indeed, there was evidence that he was trying to borrow money from the President of Lake Dogwood to fund the check. The Court not only did not discuss the evidence with regard to the $30,000.00 check but found Petitioner guilty of misconduct in giving four other checks which were not paid. No reference is made to such checks in the written charges. The specific finding which illustrates that the Court exceeded the written charges was:

> I believe that the issuance of five checks representing promises to pay substantial sums of money to citizen landowners who entered into honest negotiations for the sale of a substantial tract of land was a vital breach of moral obligation and duty and was represented an improper misrepresentation and false promises on the part of Mr. Boineau.

The charge with respect to the Henry Ingram transaction provided:

> "3. That you did enter into a real estate transaction with Henry E. Ingram, Jr. whereby you agreed to purchase 169 acres of land situate in Union County from him under the following conditions: The property was to be transferred to you and you were to place a Twelve Thousand and no/100 ($12,000.00) dollar mortgage on the said property at which time you were to transfer the property back to Mr. Ingram until such time as the total sales price was paid; in violation of this agreement you falsely and fraudulently placed a Forty Thousand and no/100 dollar mortgage on this property prior to reconveying it to Mr. Ingram; . . ."

With respect to the Ingram transaction, Petitioner does not contend that the Trial Court exceeded the charges against him *per se,* but Petitioner questions whether the lack of due process accorded Petitioner with regard to the other charges tainted the finding of the Trial Court with respect to this charge. In support of a denial of due process on the Ingram charge, Petitioner asserts that the Trial Court totally disregarded the rules of evidence with respect to this transaction to the detriment of Petitioner.

Mr. Ingram did indeed testify over objection to the facts in the written charges. His testimony was that an oral agreement existed to such effect. He also testified in contradiction thereto that Petitioner had given him a $40,000.00 note when the property in question was conveyed to Petitioner and the note was given in case Petitioner decided that he wanted to "keep" the property which Mr. Ingram acknowledged that he had a right to do. (Excerpt No. 5(d) Transcript of Record, Appendix p. 41).

The deed to Petitioner was an absolute unconditional fee simple conveyance. Yet, the Court not only allowed Mr. Ingram to contradict the deed, it accepted such evidence. The Court ignored the Statute of Frauds, Section 11-101(4), *S. C. Code of Laws* (1962) which provides:

> Agreements required to be in writing—no action shall be brought whereby:
>
> • • •
>
> (4) To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them; . . .
>
> Unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized.

The Court also ignored the parole evidence rule which is well established in South Carolina as illustrated by the case of *Scott v. Scott,* 216 S. C. 280, 57 S. E. (2d) 470 (1950) where the Court held:

> Parole reservations or exceptions made at or before the making of a deed are merged therein and cannot be allowed to alter or modify its legal effect. 57 S. E. (2d) at 476.

Fundamental fairness in the trial of a case dictates that the Court apply established rules of evidence and the failure to do so constitutes a denial of the process when it appears that such evidentiary rules are arbitrarily ignored.

The right to notice and an opportunity to defend are basic to due process. E. g., *Anderson Nat. Bank v. Luckett,* 321 U. S. 233, 64 S. Ct. 599. The contents of the notice must be such as to apprise the person charged of the nature of the claim against him. E. g., *Mullane v. Central Hanover Bank & Trust Co.,* 339 U. S. 306, 70 S. Ct. 652; *Federal Trade Commission v. Grantz,* 253 U. S. 421, 40 S. Ct. 472; *State of Washington ex Rel Oregon Railroad and Navigation Co. v. Fairchild,* 224 U. S. 510, 32 S. Ct. 535.

In the present case, the Court, during the course of the trial, ruled that the trial was limited to the written charges referred to *supra*. The Court ruled:

> They cannot go beyond the charges made in this list of charges by the Real Estate Commission against Mr. Boineau and that is what I consider that they direct themselves to. (Transcript of Record p. 230, folio 918.)

Petitioner and his counsel were lulled into a false sense of security regarding the attempts by the attorney for the South Carolina Real Estate Commission to go beyond the written charges. The order of the Trial Court was a rude awakening. Petitioner was found guilty of misconduct which no one thought was at issue in the case and no attempt was made to defend against the possibility of such findings during the trial. In effect, the Court abandoned the written charges and found Petitioner generally guilty of being a "bad guy." The Supreme Court of South Carolina glossed over the action of the Trial Court and did not even discuss the evidence.

This case obviously is important to the Petitioner personally as he has been deprived of the right to earn a livelihood in his chosen profession. The case also is important constitutionally for the administration of justice in other cases across the land. The Court should grant *certiorari* to examine and emphasize the important principle that a litigant who is charged and tried by the State, in civil as well as criminal proceedings, is entitled not only to know the charges against him, but also to have the trial limited to those specific charges, and neither the State nor the Court may allow the ends to justify the means by departing from such charges and trying an individual on other charges without notice or an opportunity to defend. In short, this is a case where a Court has so far departed from the accepted and usual course of judicial proceedings

as to call for an exercise of this Court's powers of supervision of constitutional due process.

CONCLUSION

For the foregoing reasons the Petition for *Certiorari* should be granted.

Respectfully submitted,

NEXSEN, PRUET, JACOBS &
POLLARD,
JULIAN J. NEXSEN,
WILBURN BREWER, JR.,
Attorneys for Petitioner.

This 25 day of
February, 1977.

APPENDIX

THE STATE OF SOUTH CAROLINA
In The Supreme Court

SOUTH CAROLINA REAL ESTATE COMMISSION,
Respondent,

versus

R. TRIPPETT BOINEAU, Appellant

APPEAL FROM RICHLAND COUNTY
John Grimball, Judge

Opinion No. 20301
Filed November 8, 1976

AFFIRMED

FRANK K. SLOAN; WILBURN BREWER, JR., of NEXSEN, PRUET, JACOBS & POLLARD; and WALTER W. BROOKS, all of Columbia, for appellant

ATTORNEY GENERAL DANIEL R. McLEOD and TIMOTHY G. QUINN, both of Columbia, for Respondent.

Littlejohn, A. J.: The issue in this appeal is whether the Court of Common Pleas for Richland County erred in revoking the South Carolina Real Estate Broker's License of R. Trippett Boineau (appellant).

The matter was first heard before the South Carolina Real Estate Commissioner, Honorable Ralph H. Baer, Jr. The appellant was directed to appear before the commissioner to answer charges made against him, alleged to be sufficient grounds for revocation of his license. After that hearing, the commissioner ordered that the appellant's license be revoked. The order of the commissioner was

appealed to the South Carolina Real Estate Commission and was affirmed.

Thereafter, the appellant appealed the revocation of his license to the Court of Common Pleas for Richland County. The case was tried *de novo* as an equity matter and the action of the Commission was affirmed. This appeal followed.

Sections 56-1545 to -1545.22, Code of Laws of South Carolina (1962) *as amended,* (Supp. 1975), regulate the actions and behavior of real estate brokers in South Carolina. Section 56-1545.16 provides that the Commission shall have the power to revoke a real estate broker's license if he is found guilty of any of the following:

> "(1) Making any substantial misrepresentation.
>
> "(2) Making any false promises of a character likely to influence, persuade, or induce.
>
> "(3) Pursuing a continued and flagrant course of misrepresentation, . . .
>
> "(4) Any conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness or incompetency in such a manner as to endanger the interest of the public.
>
> . . . ."

The lower court found that there were four specific transactions in which the appellant violated the statutory standards and common law rules governing the actions and behavior of licensed real estate brokers.

We copy the charges relating to these four transactions from the notice of hearing served upon the appellant:

> "2. That on May 30, 1972, you falsely represented to representatives of Lake Dogwood Associates, Inc., and to Leesburg Associates that in consideration of an extension of time within which to close a real estate transaction, you would pay the sum of Thirty Thousand and no/100 ($30,000.00) dollars, at which time you knew or should have known that insufficient funds were available to you to honor your commitment, all

> in violation of § 56-1545.16, Code of Laws of South Carolina, 1962;
>
> "3. That you did enter into a real estate transaction with Henry E. Ingram, Jr. whereby you agreed to purchase 169 acres of land situate in Union County from him under the following conditions: The property was to be transferred to you and you were to place a Twelve Thousand and no/100 ($12,000.00) dollar mortgage on the said property at which time you were to transfer the property back to Mr. Ingram until such time as the total sales price was paid; in violation of this agreement you falsely and fraudulently placed a Forty Thousand and no/100 dollar mortgage on this property prior to reconveying it to Mr. Ingram;
>
> . . . .
>
> "6. That you did enter into a real estate transaction with one Ralph Smith, enticing him to deal with you on the basis of a financial statement which you asserted as being yours, and which reflected a net equity of $20,637,747.no/100, which financial statement was false and utilized for fraudulent purposes; the personal note referred to being unpaid, the property which was the subject of the transaction was encumbered by you with a mortgage which was allowed to be foreclosed upon;
>
> "7. That you did pledge and deliver a savings passbook to one Ed Riser as security for a $40,000.00 loan after which you filed an affidavit with American Bank and Trust stating that you had lost or misplaced your passbook and withdrew the proceeds from your account, which destroyed the security you had previously given;
>
> . . . ."

After discussing in detail these charges and the evidence which was before the lower court, the judge concluded:

> "There is no question in this Court's mind, but that the behavior of Mr. Boineau, with respect to the

> four transactions detailed above, is such that the South Carolina Real Estate Commission was completely justified and correct in the revocation of Mr. Boineau's Real Estate Broker's License . . . ."

The judgment of the trial court is based upon findings of fact which are clearly correct, and we would dismiss the appeal under Rule 23 of our Rules of Practice except for the fact that we are of the view that an opinion has precedent value of considerable interest to both the Commission and realtors throughout the state.

The appellant submits twenty exceptions to the order of the lower court, framing for our consideration eleven questions as set out in his brief. Actually there are fewer issues; all have been considered.

The principal issue is the appellant's contention that in all of these four transactions he was acting not as a real estate broker, but on his own behalf. He argues that the grounds set forth for revocation of a real estate license, as quoted hereinabove, apply solely to activities of a broker while acting in his broker capacity. We disagree. Even as members of the bar are subject to disciplinary procedures for conduct not strictly related to the practice of law, realtors may have their licenses revoked for conduct not strictly related to a transaction in which they are acting as broker.

In *McKnight v. Florida Real Estate Commission,* .... Fla. .... 202 So. (2d) 199 (1967) the court, discussing a similar situation, noted that "it would be ludicrous to construe the statutes to mean that a broker to be answerable to the Real Estate Commission must commit the unlawful acts when engaged in real estate negotiations, but should he commit the same unlawful acts when not engaged in real estate negotiations he would still be of good character and beyond the Commission's jurisdiction."

In addition to our statutory grounds, it is generally held that a showing of dishonesty is a ground for revocation or suspension of a real estate broker's license, whether or not there is a statute specifically so providing. 12 Am. Jur. (2d) *Brokers,* § 19 at 788; citing *Brecheen v. Riley,*

187 Cal. 121, 200 P. 1042; *Suttles v. Florida Real Estate Commission,* 152 Fla. 432, 12 So. (2d) 176; *Ranke v. Michigan Corporation and Securities Commission,* 317 Mich. 304, 26 N. W. (2d) 898; *Porter v. Tennessee Real Estate Commission,* 38 Tenn. App. 208, 271 S. W. (2d) 21; Ann. 56 A. L. R. (2d) 592, § 4(a).

In considering the issue of revocation, it has been held proper to consider the conduct of the licensee in light of the evil the legislature sought to prevent:

> "Revocation of a license for cause has been said to contemplate such cause as would render the licensee unfit to engage in the licensed activity, with his fitness being judged in the light of the potential evil with which the legislature was concerned in enacting the licensing legislation. Under this rule the basic test is, 'Do the facts show a lack of good character, competency and integrity on the part of the licensee, or rather an impairment of these factors to such an extent as to create a possibility of the very mischief which the licensing legislation seeks to avoid?'" 51 Am. Jur. (2d), *Licenses and Permits,* § 58 at 62.

Finally, it should be noted that § 56-1545.10 requires proof of a showing of honesty, integrity, truthfulness and good reputation for any person desiring to become a broker. It does not logically follow that an initial applicant should be required to possess higher moral standards than an experienced real estate broker.

In considering all of the foregoing, it is clear that not only did the appellant violate the statutory prohibitions, but he also violated the objectives and intent of the law. A review of the evidence leaves no doubt as to this contention.

Other questions submitted to the Court challenge the sufficiency of the evidence, the admissibility of certain evidence, and the burden of proof required. As indicated hereinabove, the evidence is clearly abundant to warrant the findings and conclusions of the lower court.

The evidence objected to, even if erroneously admitted (which we do not concede), would not affect the result.

Counsel argues that the findings and conclusions of the lower court should not be based upon a preponderance of the evidence, but that a clear and convincing showing should be required. The evidence meets both standards.

The order of the lower court is

AFFIRMED.

LEWIS, C. J., NESS, RHODES and GREGORY, JJ., concur.

The Supreme Court of South Carolina

FRANCES H. SMITH
CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211

December 2, 1976

Wilburn Brewer, Jr., Esquire
Messrs. Nexsen, Pruet, Jacobs & Pollard
1231 Washington Street
Columbia, South Carolina 29201

Re: S. C. Real Estate Comm. v. Boineau

Dear Mr. Brewer:

The Court has this day refused your Petition for Rehearing in the above case in the following order:

"Petition denied.

/s/ J. Woodrow Lewis C.J.

/s/ Bruce Littlejohn A.J.

/s/ J. B. Ness A.J.

/s/ Wm. L. Rhodes, Jr. A.J.

/s/ George T. Gregory, Jr. A.J."

The remittitur is being sent down today.

Very truly yours,

Frances H. Smith

CLERK

FHS/BS

CC: Timothy G. Quinn, Esquire
Suite 1702
Bankers Trust Tower
Columbia, South Carolina 29201

-- Petition denied --

J. Woodrow Lewis C.J.

J. B. Nepple J.

Irving Gregory, Jr. J.

CERTIFIED TRUE COPY.
Clerk, S. C. Supreme Court

RECEIVED
DEC 2 1976
S. C. SUPREME COURT

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE SUPREME COURT

South Carolina Real Estate Commission,

Plaintiff-Respondent,

vs.

R. Trippett Boineau,

Defendant-Appellant.

PETITION FOR REHEARING

NEXSEN, PRUET, JACOBS & POLLARD
ATTORNEYS AND COUNSELORS AT LAW
FIRST NATIONAL BANK BUILDING
MAIN AT WASHINGTON
COLUMBIA, SOUTH CAROLINA 29201

AMERICAN BUSINESS SYSTEMS

ORDER OF THE COURT OF COMMON PLEAS FOR RICHLAND COUNTY

ORDER

This case was first heard before the South Carolina Real Estate Commissioner, Honorable Ralph H. Baer, Jr., on August 14, 1973. The Appellant was directed to appear before the Real Estate Commissioner to answer to charges made against him, which if true would result in the revocation of the Appellant's license as a real estate broker in South Carolina. After that hearing, the Real Estate Commissioner ordered that the Appellant's license as a real estate broker in South Carolina should be revoked. That order of the Real Estate Commissioner was appealed to the South Carolina Real Estate Commission and was affirmed on October 24, 1973. Thereafter, on November 2, 1973, the Appellant appealed the revocation of his Real Estate Broker's License to the Court of Common Pleas for Richland County. Two hearings were held in this matter, one on February 20, 1975 and one on July 15, 1975. The matter was fully argued by attorneys for the Appellant and attorneys for the Real Estate Commission and briefs have been filed by both sides.

The South Carolina Real Estate Commission charges that the Appellant committed acts in violation of the South Carolina Statutes, Sections 56-1545 through 56-1545.22, South Carolina Code of Laws for 1962, as Amended, regulating the actions and behavior in business transactions of Real Estate Brokers in the State of South Carolina. The pertinent portions of the statutory regulations regulating the business of real estate brokers and providing for the revocation of a real estate broker's license appear in Section 56-1545.16, South Carolina Code of Laws for 1962, as Amended. This statute provides that a real estate broker's license shall be revoked if he performs any acts constituting the following:

"(1) Making any substantial misrepresentation.

"(2) Making any false promises of a character likely to influence, persuade, or induce.

"(3) Pursuing a continued and flagrant course of misrepresentation, • • • • •.

"(4) Any conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness or incompetency in such a manner as to endanger the interest of the public."

In addition to the above statutory grounds, it is generally held that a showing of dishonesty is a ground for revocation or suspension of a real estate broker's license, whether or not there is a statute specifically so providing. 12 Am. Jur. 2nd *Brokers,* Section 19 at 788; citing *Brecheen v. Riley,* 187 Cal. 121, 200 P. 1042; *Suttles v. Florida Real Estate Commission,* 152 Fla. 432, 12 So. 2nd 176; *Ranke v. Michigan Corporation and Securities Commission,* 317 Mich. 304, 26 N. W. 2nd 898; *Porter v. Tennessee Real Estate Commission,* 38 Tenn. App. 208, 271 S. W. 2nd 21; Annotation: 56 A. L. R. 2nd 592, Section 4 (a).

Further, in considering the issue of revocation, it has been held proper to consider the conduct of the licensee in light of the evil the Legislature sought to prevent, for,

"Revocation of a license for cause has been said to contemplate such cause as would render the licensee unfit to engage in the licensed activity, with his fitness being judged in the light of the potential evil with which the legislature was concerned in enacting the licensing legislation. Under this rule the basic test is, 'Do the facts show a lack of good character, competency and integrity on the part of the licensee, or rather an impairment of these factors to such an extent as to create a possibility of the very mischief which the licensing legislation seeks to avoid'." 51 Am. Jur. 2nd, *Licenses and Permits,* Section 58 at 62.

Further,

"conduct of the licensee, while carrying on the activity for which he is licensed, that discloses such a lack of honesty, integrity, and fidelity as to show him to be unfit to continue the licensed activity, is obviously, a valid ground for revocation." Id.

Re Platz, 42 Utah 439, 132 P. 390; *Rattray v. Scudder,* 28 Cal. 2nd 214, 169 P. 2nd 371.

Using the foregoing as a standard, it is clear that not only did the Appellant violate the statutory prohibitions, but that he also violated the objectives and intent of the law. A review of the evidence presented leaves no doubt as to this contention.

In the case of *Hargis v. Florida Real Estate Commission,* Fla. . . ., 153 So. 2nd 836; the Court in denying a petition for a Writ of Certiorari, in effect upheld the finding of the Florida Real Estate Commission that a broker, who represented that certain lots were free and clear of all liens and encumbrances, and where the purchasers bought such lots relying on his representations, and their receiving a general warranty deed, when at this time the broker knew that the lots were encumbered with two outstanding mortgages and he failed to disclose these facts to the purchasers, was guilty of misrepresentation, concealment and dishonest dealing in a business transaction.

Section 56-1545.10 requires proof of a showing of honesty, integrity, truthfulness and good reputation for any person desiring to become a broker. Clearly, Mr. Boineau's actions are quite improper in light of this statute, and it does not logically follow that an initial application will be required to possess higher moral standards than an experienced real estate broker. A similar situation was discussed in the case of *McKnight v. Florida Real Estate Commission,* . . . Fla. . . ., 202 So. 2nd 199:

"We do not believe the Commission exceeded its jurisdiction (sic. suspending broker's license) simply because these checks were not issued as the result of a real estate transaction. The law specifically requires that a person in order to hold a real estate license must make it appear that he is honest, truthful, trustworthy, of good character and that he bears a good reputation for fair dealing . . . . We think it would be ludicrous to construe the statutes to mean that a broker to be answerable to the Real Estate Commission must commit the unlawful acts when engaged in real estate negotiations, but should he commit the same

unlawful acts when not engaged in real estate negotiations he would still be of good character and beyond the Commission's jurisdiction."

Mr. Boineau's actions do harm to the real estate profession, and violates the intent of the statutorily required qualifications for licensing, and are contrary to the letter of the law as well as the spirit thereof.

From a study of the record in this case made by the witnesses who testified, this Court finds that there are four specific transactions in which Mr. Boineau, acting either personally on his own behalf or as a real estate broker, violated the statutory standards and common law rules governing the actions and behavior of licensed real estate brokers. The facts and details surrounding these specific transactions are as follows:

(A) The Ralph L. Smith, Jr. Real Estate Transaction.

Ralph L. Smith, Jr. is an engineer employed by the Defender Industries and residing at Lugoff, South Carolina. At the time of Mr. Smith's business transaction with the Appellant, R. Trippett Boineau, he owned a 4.3 acre tract of land on the Moore's Chapel Road in Mecklenburg County near Charlotte, North Carolina. Mr. Smith was brought into contact with Mr. Boineau through one R. Doyle Poole who at the time was also a real estate agent. The real estate transaction between Mr. Boineau and Mr. Smith involved the sale of the 4.3 acre tract of land by Mr. Smith and his wife to Rockie Realty, Inc., a real estate corporation whose President was R. Trippett Boineau.

Mr. Smith entered into a contract of sale for the 4.3 acres of land in Mecklenburg County with Rockie Realty, Inc. and R. Trippett Boineau, its President, on August 3, 1971. There are various discrepancies in the figures in the various documents surrounding the sale of this property and from the testimony presented to the Court, I am unable to determine how these discrepancies occurred. Nevertheless, the documents are all valid, legal documents properly signed, witnessed and executed by all of the parties concerned. The signatures of Ralph L. Smith, Jr. and R. Trippett Boineau, President of Rockie Realty, Inc. on

the contract of sale are both witnessed by R. Doyle Poole. The contract of sale calls for a total purchase price for the 4.3 acre tract of land of Eighty Thousand ($80,000.00) Dollars. However, this was not the amount agreed upon between the parties when the deed was signed by Ralph L. Smith, Jr. and his wife, Jessie B. Smith, deeding the property to Rockie Realty, Inc.

After the agreement was entered into for the sale of the property by Ralph L. Smith, Jr. and his wife to Rockie Realty, Inc., the parties boarded an airplane belonging to Boineau in Columbia, South Carolina and flew to Myrtle Beach, South Carolina. At Myrtle Beach, South Carolina, the signature of Jessie B. Smith, wife of Ralph L. Smith, Jr., was obtained on the deed. The parties then flew to Charlotte, North Carolina. The deed from Ralph L. Smith, Jr. and his wife, Jessie B. Smith, to Rockie Realty, Inc. recites a consideration of One Hundred ($100.00) Dollars and other valuable consideration. However, it appears from a note signed by R. Trippett Boineau as President of Rockie Realty, Inc. and from the testimony in the hearings before this Court that the sales price for the tract of land was Sixty-five Thousand ($65,000.00) Dollars. Mr. Boineau on behalf of Rockie Realty, Inc. paid to Mr. Smith Nineteen Thousand ($19,000.00) Dollars and gave Mr. Smith a note for Forty-six Thousand One Hundred Fifty ($46,150.00) Dollars. This note was also endorsed by R. Trippett Boineau personally.

The deed from Ralph L. Smith, Jr. and his wife to Rockie Realty, Inc. was executed on August 12, 1971. Thereafter, on that same day, Rockie Realty, Inc. by R. Trippett Boineau, its President, borrowed Seventy-two Thousand ($72,000.00) Dollars, using this tract of land as security, from the North Carolina National Bank and gave to the North Carolina National Bank a first mortgage on the tract of land. On August 13, 1971, the following day, Rockie Realty, Inc., by its President, R. Trippett Boineau, gave Mr. Smith and his wife the note for Forty-six Thousand One Hundred Fifty ($46,150.00) Dollars, a second mortgage and a handwritten contract that deals with the matter in question. The net result of this entire transac-

tion was that Rockie Realty, Inc. paid Mr. Smith and his wife Nineteen Thousand ($19,000.00) Dollars for a 4.3 acre tract of land in Mecklenburg County in North Carolina and in turn borrowed Seventy-two Thousand ($72,000.00) Dollars on the same piece of property from the North Carolina National Bank. The North Carolina National Bank thereafter held a first mortgage on the tract of land. Mr. Smith and his wife held a note and a second mortgage on the tract of land, both in the sum of Forty-six Thousand, One Hundred Fifty ($46,150.00) Dollars. Thereafter, Mr. Smith and his wife received one interest payment on their note and second mortgage. Within a year the first mortgage to the North Carolina National Bank went into default and the bank foreclosed its mortgage on the property. Mr. Smith in turn had to borrow One Hundred Nineteen Thousand ($119,000.00) Dollars in order to purchase his property back at the foreclosure sale. To date, the only out of pocket expense to Rockie Realty, Inc. and to R. Trippett Boineau was the payment of Nineteen Thousand ($19,000.00) Dollars and one interest payment to Mr. Smith and his wife. As the direct result of this transaction, Rockie Realty, Inc. and R. Trippett Boineau, its President, realized Seventy-two Thousand ($72,000.00) Dollars, which had been borrowed from the North Carolina National Bank.

There is some contention in the record by Ralph L. Smith, Jr. that he was motivated in the transaction by reports of a financial statement showing the financial worth of R. Trippett Boineau as being Twenty Million ($20,000,000.00) Dollars. Whether this be true or not is totally beside the point. It is clearly evident from the record and from the facts disclosed in this transaction that R. Trippett Boineau, as President of Rockie Realty, Inc., did not at any time have any intention of repaying the financial obligation to Ralph L. Smith, Jr. and his wife or to the North Carolina National Bank. This transaction was obviously a scheme on the part of R. Trippett Boineau, President of Rockie Realty, Inc., to use the land owned by Ralph L. Smith, Jr. and his wife as a means to obtain a financial profit, through the mortgaging of that property and borrowing money against that property as security without any intention of repaying the loans made to Rockie Realty, Inc. throughout the course of the transaction. This Court believes that Mr. Boineau did not at any time have any intention of paying the first mortgage to the North Carolina National Bank or of paying the note and second mortgage to Ralph L. Smith, Jr. and his wife. This type of behavior cannot be countenanced on the part of a real estate broker licensed to do business in the State of South Carolina. The entire transaction is an open patent fraud on the landowners. The note and mortgages constitute false promises and substantial misrepresentations in complete violation of the good faith, candor and fairness owed to the public in general and a vendor-landowner in particular by a real estate broker in the State of South Carolina. I can only conclude that Mr. Boineau did not at any time intend to repay either the North Carolina National Bank in accordance with its first mortgage or the Smiths in accordance with their note and second mortgage.

(B) The Henry E. Ingram, Jr. Real Estate Transaction.

On one occasion, the appellant, R. Trippett Boineau had a business friend and associate by the name of Henry E. Ingram, Jr. Mr. Ingram owned a tract of land consisting of 169 acres in Union County, South Carolina. This tract of land was free and clear of all liens or encumbrances. Mr. Boineau and Mr. Ingram agreed that Mr. Ingram would deed this property to Rockie Realty, Inc. and Mr. Boineau would then be permitted to go to the Arthur State Bank in Union, South Carolina and place a first mortgage of Ten Thousand ($10,000.00) Dollars on the property.

On October 29, 1971, Mr. Ingram deeded the real estate to Rockie Realty, Inc. for a stated consideration of Forty-two Thousand Five Hundred ($42,500.00) Dollars. However, it appears from the documents in evidence that the only sum of money received by Mr. Ingram was Five Hundred ($500.00) Dollars and in addition he received a promissory note in the sum of Forty-two Thousand ($42,000.00) Dollars, signed by Mr. R. Trippett Boineau, Presi-

dent of Rockie Realty, Inc. and R. Trippett Boineau, individually. These being one and the same person. The record is not clear as to what monetary consideration Mr. Ingram received from Rockie Realty, Inc. during the course of this transaction. On one occasion, Mr. Ingram testified that he received at most, two or three months interest on the note that he was given by Rockie Realty, Inc. and R. Trippett Boineau. On another occasion, Mr. Ingram testified that he received Five Hundred ($500.00) Dollars as a down payment and One Hundred Fifty ($150.00) Dollars or Two Hundred ($200.00) Dollars a month until the property was redeeded back to him. which would have been for a period of from August 29, 1971, to October 4, 1972.

It appears from the evidence that the original agreement to permit Mr. Boineau as President of Rockie Realty, Inc. to put a Ten Thousand ($10,000.00) Dollar first mortgage on this real estate was altered to permit Mr. Boineau to put a Twelve Thousand ($12,000.00) Dollar first mortgage on the real estate. The only consideration received by Mr. Ingram in this transaction was the Forty-two Thousand ($42,000.00) Dollar note and some small payments of money. On October 29, 1971, in accordance with this understanding between Mr. Boineau and Mr. Ingram, Rockie Realty, Inc. placed a Twelve Thousand ($12,000.00) Dollar mortgage against this 169 acre tract of land to the Arthur State Bank. Up to this point, this transaction appears to have been in accordance with the agreement and understanding between Mr. Ingram and Mr. Boineau. However, on November 24, 1971, Mr. Boineau as President of Rockie Realty, Inc. mortgaged the tract of land to Drummond B. Farley and Louise W. Farley, giving them a second mortgage for the sum of Forty-six Thousand Nine Hundred Ninety-two and 09/100 ($46,992.09) Dollars. This appears to me to have been a direct deviation from the agreement and understanding between Mr. Boineau and Mr. Ingram and was totally unauthorized by Mr. Ingram. On October 4, 1972, Mr. Boineau, as President and Secretary-Treasurer of Rockie Realty, Inc., reconveyed the 169 acre tract of land to its original owner Mr. Ingram. The

consideration recited in the deed is Five ($5.00) Dollars and the assumption of a Twelve Thousand ($12,000.00) Dollar mortgage. The mortgage is obviously that mortgage placed on the land by Rockie Realty, Inc. with the Arthur State Bank. There is no mention in the deed of the second mortgage to Drummond B. Farley and Louise W. Farley and Mr. Ingram's testimony is that at the time he did not know anything about that mortgage.

On October 4, 1972, at the time of the reconveyance of the tract of land by the Rockie Realty, Inc. to Mr. Ingram, Mr. Ingram signed the following document: "I, Henry E. Ingram, Jr., agree to return to R. T. Boineau one note for the sum of $42,500.00 on 169 acres in Union County on the terms that the property is free and clear of any mortgages and judgments other than the $12,000.00 owed to Arthur State Bank and that R. T. Boineau will make arrangements to pay said $12,000.00 on or before due date." Subsequently, Drummond B. Farley and Louise W. Farley foreclosed their second mortgage on the 169 acre tract of land, subject to the first mortgage held by the Arthur State Bank. The Order of Foreclosure was signed by Honorable Robert W. Hayes, Judge, Sixteenth Judicial Circuit, November 11, 1972. The amount of the Judgment of Foreclosure was Fifty-four Thousand Three Hundred Twenty-five and 62/100 ($54,325.62) Dollars. There is also testimony in the record from Mr. Ingram to the effect that a Twenty-five Thousand ($25,000.00) Dollar judgment was lodged against this property as the result of the ownership of the property by Rockie Realty, Inc. Mr. Ingram's note for Forty-two Thousand ($42,-000.00) Dollars, signed by Mr. Boineau as President of Rockie Realty, Inc. and also individually, has never been paid. As a result of these transactions with Mr. Boineau, Mr. Ingram has lost his tract of 169 acres in Union County. The agreement between Mr. Boineau and Mr. Ingram in its inception was to the effect that this tract of land was to be conveyed to Rockie Realty, Inc. for the purpose of aiding Mr. Boineau in obtaining Twelve Thousand ($12,-000.00) Dollars from the Arthur State Bank. The deed to Rockie Realty, Inc. was a trust arrangement and was not

an out and out sale of the property in fee simple. The note of October 29, 1971, from Mr. Boineau, as President of Rockie Realty, Inc. and individually, to Mr. Ingram is simply security for the payment of the Twelve Thousand ($12,000.00) Dollar mortgage to the Arthur State Bank. Mr. Ingram did not demand and did not receive from Mr. Boineau or from Rockie Realty, Inc. a purchase money mortgage which would normally have been demanded and required if the transfer of the tract of land to Rockie Realty, Inc. had been a sale in fee simple. Mr. Ingram did not authorize the placing of the second mortgage on the property and had no knowledge that this was being done. The actions and behavior of R. Trippett Boineau is an unconscionable breach of trust and should not be permitted or condoned of someone licensed as a real estate broker in the State of South Carolina. The least that can be said of Mr. Boineau's behavior in this transaction is that it demonstrates bad faith and untrustworthiness on his part.

(C) The Edward W. Riser Transaction.

On December 10, 1971, R. Trippett Boineau opened a savings account with the American Bank and Trust of West Columbia, South Carolina, by a deposit of Forty-two Thousand Eight Hundred Twenty-three and 46/100 ($42,823.46) Dollars. On that same day he entered into an agreement with Edward W. Riser, borrowing from Mr. Riser on a Ninety (90) day note Thirty-six Thousand Six Hundred ($36,600.00) Dollars. As security for the payment of the note and the repayment of the money borrowed from Mr. Riser, Mr. Boineau delivered to Mr. Riser the savings account pass book with the American Bank and Trust. The Account Number of Mr. Boineau's savings account was 085-00875-3. Mr. Riser did not notify the American Bank and Trust that he had lent this money to Mr. Boineau and held Mr. Boineau's savings account pass book at Mr. Boineau's request because Mr. Boineau said it would effect his credit at the bank and Mr. Riser wanted to help Mr. Boineau.

On December 21, 1971, eleven days later, Mr. Boineau went to the American Bank and Trust and without the

savings account pass book and with the written permission of Mr. Jack W. Montgomery, a Vice President of the American Bank and Trust, made three withdrawals from his savings account, one in the amount of Twenty-one Thousand ($21,000.00) Dollars; one in the amount of Five Hundred Twenty-two and 50/100 ($522.50) Dollars; and the third in the amount of Eight Thousand Nine Hundred Twenty ($8,920.00) Dollars. Thereafter, the officials at the American Bank and Trust began pressing Mr. Boineau to bring them his savings account pass book to be updated so that it would reflect the cash withdrawals that had been made. The bank officials kept insisting that Mr. Boineau come to the bank and bring his pass book and let the bank bring it up to date. Mr. Boineau informed the bank officials that he had lost or misplaced his savings account pass book and did not know where it was. Thereafter, on February 1, 1972, in the presence of Honorable Forrest K. Abbott, Notary Public for South Carolina, Mr. Boineau signed the following sworn Affidavit of Lost Pass Book: "Personally appeared before me R. T. Boineau who being duly sworn deposes and says: That as the owner of Regular Pass Book Savings Account No. 085-00875-3 issued by American Bank and Trust, W. Cola., S. C., that the said pass book has not been hypothicated or pledged but has been lost or stolen on December 21, 1971." Mr. Boineau did not at any time inform Mr. Edward W. Riser of the three withdrawals from the savings account on December 21, 1971, that he made without his savings account pass book. Mr. Boineau did not inform the officials of the American Bank and Trust of the pledge of the savings account pass book to Mr. Riser for the loan of Thirty-six Thousand Six Hundred ($36,600.00) Dollars. In fact, Mr. Boineau willfully and deliberately, first, persuaded Mr. Riser not to notify the officials of the American Bank and Trust that he had pledged his savings account pass book to Mr. Riser and, secondly, signed a false statement under oath for the officials of the American Bank and Trust to the effect that his savings account pass book had been lost or stolen. At the hearing on this case, the attorneys representing Mr. Boineau sought to take refuge behind

the factual allegation that the three withdrawals that Mr. Boineau made from his savings account on December 21, 1971, without his savings account pass book were made in order to pay some debts owed by Mr. Boineau to the American Bank and Trust. Conceding that this is true, it does not justify Mr. Boineau's behavior in failing to disclose to the American Bank and Trust that he had, in fact, pledged his savings account pass book to Mr. Riser and his failure to disclose to Mr. Riser that he had withdrawn funds from his savings account with the American Bank and Trust without the use of the pass book that he had pledged to Mr. Riser. In addition to this, nothing can justify the willful and deliberate statement under oath made by Mr. Boineau that the savings account pass book had not been pledged or hypothecated, but had been lost or stolen when Mr. Boineau knew that this was a false statement. Mr. Riser did testify that subsequently on one occasion, Mr. Boineau stated to him that for some strange reason, American Bank and Trust demanded that Mr. Boineau deliver them the money in his savings account to pay to them a debt that Mr. Boineau owed American Bank and Trust. In response to this statement, Mr. Riser agreed to go along with Mr. Boineau for a short period of time to permit Mr. Boineau to put funds back into his savings account so that his note could be paid. On February 10th or 15th, 1972, Mr. Riser presented the savings account pass book to American Bank and Trust in order to collect his funds to pay his note and the funds were not there. Subsequently, it became necessary for Mr. Riser to move against Mr. Boineau to collect his debt. Attorneys were employed and on March 3, 1972, American Bank and Trust issued two cashier's checks to Edward W. Riser in the amount of Forty-two Thousand Eight Hundred Twenty-four and 46/100 ($42,824.46) Dollars in payment of this debt. The fact that the funds withdrawn from the savings account were paid to American Bank and Trust for money owed it by Mr. Boineau and the fact that Mr. Riser was ultimately paid the amount of his loan to Mr. Boineau does not alleviate or erase Mr. Boineau's devious behavior. His failure to disclose those things that he should have disclosed, his false statement under oath to the American Bank and Trust concerning the status of his savings account pass book and his overall underhanded behavior in this entire transaction constituted conduct on the part of a licensed real estate broker that cannot be excused or condoned.

In my opinion, this entire transaction is fraught with willful and deliberate misrepresentations, false promises and a false statement made under oath with full knowledge of the falsity of the misrepresentations and false statements by Mr. Boineau when they were made.

(D) Lake Dogwood Associates. Inc. and Leesburg Associates Transactions.

In February, 1972, Mr. Boineau on behalf of himself and his corporate counterpart, Rockie Realty, Inc., entered into contracts with Lake Dogwood Associates, Inc. and Leesburg Associates for the purchase of two substantial tracts of land in Richland County. The written agreement between Rockie Realty, Inc. and Lake Dogwood Associates, Inc. is in evidence, signed and witnessed by all of the necessary parties. In the furtherance of this transaction and the purchase of the real estate in question, on March 14, 1972, Mr. Boineau issued two checks in the amount of Five Thousand ($5,000.00) Dollars each. One check being issued to Lake Dogwood Associates, Inc. and the other to Leesburg Associates.

Subsequently, on April 20, 1972, Mr. Boineau issued two more checks in the amount of Five Thousand ($5,000.00) Dollars each, one to Lake Dogwood Associates, Inc. and the other to Leesburg Associates. These four checks upon presentation to the bank were all dishonored and payment was refused on each on the basis that there was not sufficient funds in the bank to pay the checks. These four checks all represented a part of the contractual consideration agreed to by Mr. Boineau. The two contracts in question with Lake Dogwood Associates and Leesburg Associates were substantial in nature and involved the time, the consideration and the efforts of a large number of people.

The written agreement for the purchase of the Lake Dogwood Associates, Inc. tract of land discloses an agreed purchase price of Seven Hundred Twenty-six Thousand ($726,000.00) Dollars and the acreage in the tract to be purchased was 660 acres. There were numerous meetings of all of the parties involved in this contract for the sale and purchase of the properties in question. The property belonging to Leesburg Associates adjoined the property belonging to Lake Dogwood Associates, Inc.

After the four checks for Five Thousand ($5,000.00) Dollars each, two having been issued on March 14, 1972, and two having been issued on April 20, 1972, were dishonored and payment refused, Mr. Boineau pursued this matter and on June 1, 1972, he issued to Mr. Herbert Meeting, Attorney at Law, who represented the landowners, a further check in the sum of Thirty Thousand ($30,000.00) Dollars, this check representing the four dishonored checks and an additional sum of Ten Thousand ($10,000.00) Dollars. This check in turn was also turned down by the bank on which it was drawn and returned unpaid because of insufficient funds being in the account to honor the check. The entire transaction for the purchase of these two tracts of land thereafter fell through and was never consummated between Mr. Boineau and any of his corporations and the landowners. Herbert Meeting, Esq. is now deceased and, therefore, could not testify.

I believe that the issuance of five checks representing promises to pay substantial sums of money to citizen landowners who entered into honest negotiations for the sale of a substantial tract of land was a vital breach of moral obligation and duty and represented an improper misrepresentation and false promises on the part of Mr. Boineau.

There is no question in this Court's mind, but that the behavior of Mr. Boineau, with respect to the four transactions detailed above, is such that the South Carolina Real Estate Commission was completely justified and correct in the revocation of Mr. Boineau's Real Estate Broker's License. Therefore,

IT IS ORDERED, ADJUDGED AND DECREED That the Real Estate Broker's License of R. Trippett Boineau issued by the South Carolina Real Estate Commission is hereby revoked and terminated as of the date of this Order.

IT IS FURTHER ORDERED That Mr. Boineau shall immediately surrender his Real Estate Broker's License to the South Carolina Real Estate Commissioner, Honorable Ralph H. Baer, Jr. and Mr. Boineau shall no longer be permitted to practice the profession of a Real Estate Broker in the State of South Carolina, unless and until his Real Estate Broker's License is renewed or restored in accordance with law.

AND IT IS SO ORDERED.

/s/ JOHN GRIMBALL,
Judge, Fifth Judicial Circuit.

Columbia, S. C.
January 13th, 1976.

4. Excerpts from Transcript of Record and Petition for Rehearing relative to preservation of constitutional question.

(a) Colloquy between counsel and Court. P. 230 of Record.

Mr. BREWER: Now, Your Honor, as to the rest of number 11 it would be my understanding in that as Your Honor has stated that Mr. Boineau has to be notified of the charges against him as to both the remainder of paragraph 11 and paragraph 10 these charges are so indefinite that, and vague, that the Court should not consider them. First of all, we say the Court should not consider them they are so indefinite and vague and that they should be stricken. And in any event certainly they should not go beyond the bounds of the particulars that are set forth in the other charges.

The COURT: They cannot go beyond the charges made in this list of charges by the Real Estate Commission against Mr. Boineau and that is what I consider that they direct themselves to.

Mr. BREWER: Thank you, sir.

The COURT: All right.

4. (b) Relevant exceptions taken on appeal to South Carolina Supreme Court.

EXCEPTIONS

3. The Trial Court erred in respect to its findings concerning the Ralph L. Smith, Jr., transaction by finding that Appellant had fraudulently placed a first and second mortgage upon the property involved with no intention of paying the said mortgages, the error being that no such charge was made ever against Appellant, Appellant was not given notice of such charge nor the opportunity to defend against such charge.

4. In regard to the Ralph L. Smith, Jr. transaction, the Trial Court erred in finding the Appellant guilty of placing mortgages upon the property which Appellant did not intend to pay, the error being that no such charges were made against Appellant and the Trial Court had restricted the issues of the trial to the written charges made against Appellant.

* * *

5. With regard to the Lake Dogwood Associate, Inc. and Leesburg Associates transactions, the Trial Court erred in considering the dishonor of four five thousand dollar checks as a grounds for revocation of Appellant's license, the error being that no charges were made by the South Carolina Real Estate Commission against Appellant with respect to such checks and the Appellant had no notice of nor opportunity to defend a charge with respect to such checks.

* * *

9. With regard to the Lake Dogwood Associates, Inc., transaction, the Trial Court erred in admitting in evidence three letters written by Herbert M. Meeting, Esquire, Plaintiff's Exhibits 10, 11 and 12, the error being that such letters were not properly authenticated and constituted hearsay evidence.

* * *

13. With regard to the Edward W. Riser transaction, the Trial Court erred in finding Appellant guilty of acts termed by the Court as misconduct that were not specified

in the written charges with respect to such transaction, to wit, that Appellant failed to disclose to American Bank & Trust Company that the passbook in question was pledged; that Appellant failed to disclose to Mr. Riser that money had been withdrawn from the account, and concerning "his (Appellant's) overall underhanded behavior in this entire transaction", (matter in quotes is language of the Court; matter in parenthesis is supplied) the error being that it was improper for the court to consider as improper or for any reason matters not within the scope of the charges.

14. With respect to the Henry E. Ingram transaction, the Trial Court erred in allowing Mr. Ingram to testify over objection that Appellant orally agreed not to place any second mortgages on property conveyed from Mr. Ingram to Appellant and in finding that Appellant violated such oral agreement, the error being that the deed from Mr. Ingram to Mr. Boineau contained no restriction to such effect and the admission of such testimony violated the parole evidence rule.

15. With respect to the Henry E. Ingram transaction, the Trial Court erred in allowing Mr. Ingram to testify over objection that Appellant orally agreed not to place any second mortgages on property conveyed from Mr. Ingram to Appellant and that Appellant violated such oral agreement, the error being that such testimony was precluded and prohibited by the statute of frauds.

16. With respect to the Henry E. Ingram transaction, the Trial Court erred in finding that the conveyance from Mr. Ingram to Appellant was not a conveyance of the fee simple title but was a trust arrangement, the error being that such a finding was not supported by evidence of a clear and convincing nature.

17. With respect to the Henry E. Ingram transaction, the Trial Court erred in finding that Appellant was guilty of bad faith, fraud or untrustworthiness or conduct amounting to fraud with respect to such transaction, the error being that such a finding was not supported by evidence of a clear and convincing nature.

4. (c) Relevant portions of Petition for Rehearing.

PETITION FOR REHEARING

The Appellant herein respectfully petitions the Court to rehear this matter and reconsider its Order of November 8, 1976 upon the following grounds:

1. The Court misapprehended the thrust of Appellant's appeal which was that the Trial Court's findings of misconduct were not based upon, or related to, the written charges against Appellant but were based upon findings of misconduct with which Appellant had not been charged or given notice, of or opportunity to, defend, thereby depriving Appellant of due process of law.

2. With respect to the four charges set forth in the Opinion of the Court dated November 8, 1976, the Court overlooked the basis of Appellant's appeal in the following particulars:

(a) As to the Ralph L. Smith, Jr. transaction, that the alleged false financial statement referred to in the charge was not admitted into evidence, and the Trial Court dismissed said charge.

(b) As to the Henry E. Ingram, Jr. charge, that Mr. Ingram testified that Appellant had the option of keeping the property in question. Consequently, retention of title by Appellant, in consideration for which he had delivered his $42,000.00 note to Ingram, did not constitute fraud; nor did his subsequent mortgaging of the property.

(c) As to the Edward Riser transaction, for which Appellant was charged with fraudulently withdrawing funds from a bank account in which Riser had a security interest, the record clearly reveals that Appellant protected Riser's interest by depositing funds in the account and that Riser was paid in full.

(d) As to the Lake Dogwood Associates transaction, the record clearly reveals that although Lake Dogwood Associates had asked for and desired a check that was good, Appellant advised them on the date that the check was given that it was not funded but that he would try to make it good.

3. The Court, in affirming the Trial Court's findings of misconduct with respect to the four charges referred to in Number 2 above, overlooked the fact that the Trial Court did not specifically find Appellant guilty of the charges *per se*, but rather found Appellant guilty of general wrongdoing, which findings deprived Appellant of a fair trial and of due process of law because such findings were contrary to the ruling of the Trial Court at the trial that the South Carolina Real Estate Commission was limited to the written charges *per se* and no attempt was made to defend Appellant except as to the written charges.

4. With regard to the question of statutory construction, the Court overlooked the fact that real estate brokers, unlike lawyers who are inherently subject to regulation by the courts, are not subject to inherent regulation and the power to revoke a license, other than upon grounds enumerated in the statute, cannot be implied or inferred.

Wherefore, Appellant prays that the Court rehear and reconsider this matter and issue an order reversing the Trial Court.

Respectfully submitted,

NEXSEN, PRUET, JACOBS & POLLARD,
By: /s/ WILBURN BREWER, JR.,
/s/ FRANK K. SLOAN,
Attorneys for Defendant-Appellant.

November 17, 1976

5. Excerpts from Transcript of Record relative to reasons for granting Writ of Certiorari.

(a) Ruling of Trial Court that charges relating to financial statement are dismissed. Transcript of Record, p. 232.

The COURT: Well, the charge insofar as it's based on allegations of misrepresentations by written net worth or financial worth which was false, those charges are dismissed but again I say there is testimony in the record to the effect that an oral statement was made concerning the net worth of Mr. Boineau.

Mr. SLOAN: Thank you, Your Honor. Having those written charges dismissed was our motion.

The COURT: Well, all right, sir.

5. (b) Testimony that Mr. Riser was only person to get money out of account after affidavit executed. Transcript of Record, pp. 236, 237.

Q. When was that affidavit executed?

A. 1st day of February, 1972.

Q. Did . . . was that affidavit executed at your instance, Mr. Montgomery?

A. I don't follow you.

Q. Did you ask for that affidavit?

A. Yes, we did.

Q. To clear up your records?

A. That's correct.

Q. All right. Now tell me again when it was executed.

A. This was the 1st day of February, 1972.

Q. After that affidavit was executed, were there any withdrawals made from that account?

A. Yes, sir.

Q. When,

A. In March.

Q. March when, sir?

A. March 3, '72.

Q. And how much money was withdrawn?

A. $42,824.46.

Q. And do your bank records reflect who got that money?

A. Yes, sir.

Q. Is this the record showing who made the withdrawal and who got the money?

A. Yes, it does.

Q. Who got the money?

A. We issued two cashier's checks to Mr. Edward W. Riser.

Q. For the total amount of the withdrawal?

A. Let's see. Yes, sir, that's correct.

Mr. BREWER: We would like to offer these bank records into evidence, Your Honor.

5. (c) Testimony of Mr. Riser that he was informed of withdrawal from account prior to execution of affidavit. Transcript of Record, p. 47.

A. Mr. Boineau stated to me one day in his office that for some strange reason that American—can I tell that?

The COURT: You can state any conversation you had with Mr. Boineau, but you can't state any conversation you had with anybody else out of his presence.

A. Thank you. Mr. Boineau stated to me one day in his office that some kind—something came up over at American Bank and Trust, that he owed them some money and—I don't know exactly how it came about but all of a sudden they, he said, they made him take the money out of this passbook in order to pay them. And Mr. Boineau stated to me at the time that he—they withdrew the funds on him. So that's—

Q. And when did this occur?

A. It was sometime around January of 1972.

Q. And when did you try to collect the funds out of the account represented by this passbook?

A. Well, I told Mr. Boineau at the time that I would go along with him for a short period of time to get the funds back in there because I had to have the note cleared up, so I gave him a reasonable period of time and then I tried to collect this sometime around the tenth—around the tenth or the fifteenth of February, somewhere around that range. I would say, the following month.

Q. That would be February of '72?

A. '72, correct.

5. (d) Testimony of Mr. Ingram that Petitioner could keep the property conveyed to him by Mr. Ingram. Transcript of Record, pp. 126, 127.

Q. And you say that there was—let's get back—was there any other written agreement between the two of you other than the deed where you deeded the property to him and the deed where he deeded it back to you?

A. A note.

Q. A note for how much?

A. $42,000.00.

Q. And that's the note that you have there?

A. Yes.

Q. And you received that at the time you deeded the property to Mr. Boineau?

A. That's correct.

Q. And how was that note to be paid?

A. He said that he might want to go ahead and keep the property—

Q. What does the note say as to how it's going to be paid?

A. —And if he did he would pay it. "Interest shall be payable monthly, the principal shall be paid after the lapse of three years in seven equal annual installments of $6,000.00 each". "Together with all accrued interest."

Q. And you were deeding him this property for that note?

A. I was deeding him this property in order that he could place a loan on it. He said he might want to go ahead and keep the property and if he did he would give me the note as security.

Q. Well—I don't really understand what you're saying. If he kept the property, you would have the note to secure if he kept the property?

A. If he kept the property.

Supreme Court, U. S.
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MAY 18 1977
MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1199

SOUTH CAROLINA REAL ESTATE COMMISSION,
RESPONDENT,

versus

R. TRIPPETT BOINEAU, PETITIONER

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF SOUTH CAROLINA

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OPINIONS BELOW

The opinion of the South Carolina Supreme Court is reported at . . . S. C. . . ., 230 S. E. (2d) 440 and is set forth in the Petitioner's Appendix at p. 15. The opinion of the Court of Common Pleas for Richland County is unreported and is set forth in Petitioner's Appendix at p. 21.

JURISDICTION

The constitutional question raised here was not properly before the South Carolina Supreme Court for determination there. An adequate nonfederal basis exists on which this decision rests. This Court, therefore, lacks subject matter jurisdiction of the petition for certiorari.

QUESTION PRESENTED

Whether, on the merits, Petitioner received due process of law and a fair trial, in that his real estate broker's license was revoked pursuant to fact findings which were fairly embraced by the notice of charges against Petitioner.

CONSTITUTIONAL PROVISION INVOLVED

Respondent does not question that, if any, Section 1 of the Fourteenth Amendment to the Constitution of the United States, is the constitutional provision involved.

STATEMENT OF CASE

Certain written charges were made against Petitioner by the South Carolina Real Estate Commission which held an administrative hearing to determine whether Petitioner's Real Estate Broker's license should be revoked. From an adverse ruling by the Commission, the Petitioner appealed to the Court of Common Pleas, where, pursuant to Section 56-1545.21, *S. C. Code of Laws* (1976 Supp.), the matter was tried *de novo* as an equity matter without a jury.

On January 13, 1976 the Court of Common Pleas issued an order finding Petitioner guilty of misconduct with respect to four separate transactions and ordering the Petitioner's Real Estate Broker's license to be revoked.

Petitioner asserts, in his statement of case, that "with respect to each" of the four transactions involved, the Trial Judge found the Petitioner guilty of conduct with which the Petitioner asserts that he had neither been charged nor given notice or opportunity to defend. This is materially inaccurate, by Petitioner's own admission. The contradiction occurs on page 8 of the petition for certiorari in the second full paragraph, where Petitioner

asserts "With respect to the Ingram transaction, Petitioner does not contend that the Trial Court exceeded the charges against him *per se* . . ."

Respondent contends constitutionally adequate notice was given Petitioner, as to all charges.

Petitioner took a timely appeal to the Supreme Court of South Carolina which issued an order on November 8, 1976 affirming the judgment of the Court of Common Pleas. The South Carolina Supreme Court found that the findings and conclusions of the lower court were supported by clear and convincing evidence. *South Carolina Real Estate Commission v. Boineau,* ... S. C. ..., 230 S. E. 2d 442 (1976). A timely Petition for Rehearing was filed and was denied by the Supreme Court on December 2, 1976. Respondent does not contest the timeliness of the petition for writ of certiorari.

THE FEDERAL CONSTITUTIONAL QUESTION WAS NOT PROPERLY PRESENTED TO THE SOUTH CAROLINA SUPREME COURT FOR DECISION

Admittedly, the question of findings of fact exceeding the charges in the Notice of Hearing was raised by counsel at all appropriate stages. But in no wise was the South Carolina Supreme Court called upon to consider the alleged error of the Trial Court, in the light of federal constitutional standards. "Every ground of appeal ought to be so distinctly stated that the Court may at once see the point which it is called upon to decide without having to 'grope in the dark' to ascertain the precise point at issue. The object of an exception is to present some **distinct principle or question of law** which appellant claims was violated by the Trial Court." *Boyer v. Laughton-Woodward, Inc.,* 247 S. C. 167, 146 S. E. 2d 606 (1966). [Emphasis supplied.] Where the decision of the South Carolina Supreme Court as to a

federal constitutional matter is sought, the fact that a decision in federal constitutional terms is desired should be specifically called to the Court's attention. The appeal should not leave the issue to inference or innuendo.

The Petition for rehearing alleged misapprehension by the State Supreme Court of the due process issue. But the Court can not misapprehend that which was not called to its attention in the original appeal. cf. *Arnold v. Carolina Power and Light Company,* 168 S. C. 163, 176 S. E. 234 (1933).

Furthermore, the issue of whether Petitioner received a fair trial in accordance with his federal constitutional rights was raised for the first time in the Petition for Certiorari. It is submitted that the federal question was never properly framed or presented to the South Carolina Supreme Court for decision, and that said State Supreme Court is not required to guess or infer that a federal constitutional question is before it for decision. See Appendix A, Questions Presented in Petitioner's Brief in the State Supreme Court, as well as Exceptions cited in the Petition for Certiorari, at p. 36.

ARGUMENT

The South Carolina Real Estate Commission, in opposition to the Petition for a Writ of Certiorari in this matter, respectfully submits the following:

I

This Court need not review the fact findings in every case tried across the land.

The thrust of Petitioner's argument is that the findings of fact in his trial exceeded the charges against him. A unanimous Supreme Court of South Carolina has stated, in effect, that except for the clarification that real estate brokers may be deprived of their licenses for conduct not

specifically related to the practice of brokering real estate, that it would dismiss the appeal under Rule 23 of its Rules of Practice. *South Carolina Real Estate Commission v. Boineau,* ... S. C. ..., 230 S. E. (2d), 441 (1976). This indicates that all the Justices of the Court conclude that the grounds of the appeal are manifestly without merit. *Rules of Practice of the South Carolina Supreme Court,* Rule 23.

Under these circumstances, Petitioner is asking the United States Supreme Court to get into the business of reviewing the fact findings in every case to see if the facts found exceed the charges made. Petitioner would have this Court undertake a chapter and verse review of every charge made and every fact found in every trial court to determine if the former exceed the latter. It is submitted that this function is properly that of the state appellate courts. This Court should not undertake a plenary review of the charges and fact findings in every case where, somewhat as an afterthought, Petitioner alleges that he was denied a fair trial and due process of law.

This case has minimal precedental value for the guidance of other courts. Respondent concedes the legal point that Petitioner was entitled to due process of law and a fair trial. It contends that, on the facts, Petitioner received same. In a Utopia, no doubt there would exist a super court to review all lower appellate court reviews, of trial court fact finding. But it is submitted that the exigencies of this Court's business preclude such review here.

II

This Court lacks jurisdiction of the subject matter in this case, in that the decision rests upon an adequate non-federal ground.

It is well recognized that this Court will not take jurisdiction of a case which rests upon an adequate non-

federal ground. *Ellis v. Dixon,* 349 U. S. 458, 75 S. Ct., 850, 99 L. Ed. 1231 (1955).

With regard to the "Ingram" transaction, in the Petition for Certiorari at page 8, Petitioner concedes that he had adequate notice of the charges, effectively conceding his constitutional argument. He then "questions" whether the alleged improper fact finding on other counts somehow "tainted" the fact finding in the Ingram transaction. No further evidence or argument is adduced in support of this proposition. Even assuming arguendo, the accuracy of Petitioner's allegations relative to the Smith, Riser, and Lake Dogwood transactions, there has been no showing of "taint" whatsoever, in this independent Ingram transaction.

Petitioner further alleges that the Trial Court's failure to apply the parol evidence rule and the Statute of Frauds amounted to a denial of federal due process of law. The short answer is that no federal constitutional question with regard to the State's parol evidence and Statute of Frauds rules was raised prior to the Petition for Certiorari, and thus was not presented to the State Supreme Court for review other than as a question of state evidence law. Therefore these questions are not properly before this Court.

Furthermore, as a matter of state law, it was proper for the Trial Court not to invoke such rules, since fraud, and not the terms of a contract, was at issue and the Statute of Frauds is not applied by South Carolina to conceal a fraud. *Florence Printing v. Parnell,* 178 S. C. 119, 182 S. E. 313 (1934); *Gardner v. Nash,* 225 S. C. 303, 82 S. E. 2d 123 (1954). Similarly, when fraud is charged, parol evidence is admissible to prove fraud, even though such testimony tended to vary the terms of a written instrument, when it is alleged that such instrument was procured as a result of the fraud charged. When fraud is

charged, much leeway is allowed in the admission of evidence on that issue. *Allen-Parker Co. v. Lollis,* 257 S. C. 266, 185 S. E. 2d 739 (1971).

There was no arbitrary violation of the state's evidence law. Further, any "arbitrariness" which amounted to a denial of due process was not called to the attention of the State Supreme Court in any manner. Thus, it is not properly before this Court.

The Ingram transaction alone constitutes an adequate state basis for decision. The objections that the other fact findings "taint" this one and that there was an arbitrary ignoring of state evidentiary rules, are essentially without merit. The Writ should be denied on the basis of this finding alone.

III

Petitioner was not denied due process of law, nor a fair trial, inasmuch as he was found guilty of misconduct of which he had specific notice, based on clear and convincing evidence.

Respondent agrees with the principle that adequate notice of charges is constitutionally mandated in this, as in every case. Respondent contends that Petitioner was found in violation of the law on specified charges which were supported by clear and convincing evidence, *Boineau, Supra,* at 442 and particularly set forth in the Trial Court's findings.

Petitioner was found to have violated the real estate licensing law with regard to four (4) separate transactions, referred to as the Ingram, Riser, Lake Dogwood, and Smith transactions.

With respect to the Ingram transaction, Petitioner concedes that the fact findings did not go beyond the charges noticed.

With respect to the Riser transaction, the charge was "That you did pledge and deliver a savings passbook to one Ed Riser as security for a $40,000.00 loan after which you filed an affidavit with American Bank and Trust stating that you had lost or misplaced your passbook and withdrew the proceeds from your account, which destroyed the security you had previously given; . . ." Petition for Certiorari, p. 17.

The Trial Court's findings with respect to this transaction are set forth in the Appendix of the Petitioner's Petition for Writ of Certiorari, pages 30-33. The Trial Court's findings are entirely responsive to the charge noticed and include specific findings that Petitioner made a false statement under oath by passing an affidavit of lost passbook to American Bank and Trust Company. The Petition for Certiorari rather skirts the fact that Petitioner was found guilty of filing a false affidavit, as charged. The State Supreme Court stated that all findings were supported by clear and convincing evidence .... S. C. ...., 230 S. E. (2d) 442 (1976).

The fact that the Court found the entire transactions surrounding the filing of the false affidavit constituted "overall underhanded conduct" in no way vitiates the substantive finding that Petitioner filed a false and fraudulent affidavit. It is further submitted that the filing of a false affidavit, standing alone, constitutes sufficient state grounds for the revocation of the real estate license. The fact that the judge found the entire transaction which underlay the filing of the false affidavit to be fraudulent, in addition to the specific finding relative to the false affidavit, does not constitute a due process denial. This is so especially since the fact findings clearly encompass the facts alleged in the charge.

Very similar considerations apply to the trial Judge's treatment of the Lake Dogwood transaction. The charge against Petitioner was "That on May 30, 1972, you falsely represented to representatives of Lake Dogwood Associates, Inc., and to Leesburg Associates that in consideration of an extension of time within which to close a real estate transaction, you would pay the sum of Thirty Thousand and No/100 ($30,000.00) dollars, at which time you knew or should have known that insufficient funds were available to you to honor your commitment, all in violation of Section 56-1545.16, Code of Laws of South Carolina; . . ." Petition for Certiorari, p. 16.

The Court's finding of fact, Petitioner's Appendix, page 33-35, clearly demonstrates that petitioner issued a Thirty Thousand and No/100 ($30,000.00) Dollar check which, the evidence showed clearly and convincingly, was dishonored and constituted a false representation. This fact finding is quite clear in the Judge's Order, in the second two paragraphs of page 34 of the Petition.

The Judge included four other fraudulent checks which gave rise to the issuance of the Thirty Thousand and No/100 ($30,000.00) dollar check, in his findings of fact. This in no way vitiates the finding relative to the Thirty Thousand and No/100 ($30,000.00) dollar check, which finding alone would have constituted a sufficient basis for revocation of the license. The four Five Thousand and No/100 ($5,000.00) Dollar checks, and their issue, constituted an integral part of the transaction by which the Thirty Thousand ($30,000.00) dollar check was dishonored.

It is a novel proposition indeed, that a Trial Court is relegated to parroting the language of a charge in his fact findings, and that he may not explore fully the facts which gave rise to the transaction charged. This Court is concerned with fundamental fairness when it reviews questions

under the due process clause of the Fourteenth Amendment. It was not fundamentally unfair to Petitioner for the Trial Court to discuss the full transaction which gave rise to the passing of a fraudulent check nor for the Court to find that other aspects of the transaction were also fraudulent.

The Ralph Smith transaction involved the following charge: "That you did enter into a real estate transaction with one Ralph Smith, enticing him to deal with you on the basis of a financial statement which you asserted as being yours, and which reflected a net equity of $20,637,747 No/100, which financial statement was false and utilized for fraudulent purposes; the personal note referred to being unpaid, the property, the subject of the transaction, was encumbered by you with a mortgage which was allowed to be foreclosed upon; . . ." Petition for Certiorari, p. 4.

Petitioner was accused in this charge, among other things, of the fraudulent use of a financial statement. No copy of this transaction was ever admitted into evidence. But the charge also fairly includes the accusation that Petitioner encumbered real estate by mortgage and allowed it be foreclosed, to the detriment of the complaining witness. The Court's fact findings, which the Supreme Court concluded were supported by clear and convincing evidence, were that the property was mortgaged without intent of repayment. The language, "the property which the subject of the transaction was encumbered by you which was allowed to be foreclosed upon," quoted at page 5 of the Petition for Certiorari, gave adequate notice to Petitioner that he was charged with encumbering property by mortgage and letting the same be foreclosed. This is the precise finding of the Trial Court. Petition for Certiorari, Appendix, page 26 and 27.

Petitioner received adequate notice of the charges against him, and the findings of fact corresponded fairly and substantially therewith.

CONCLUSION

For all the reasons above cited, this Court should deny Petition for Writ of Certiorari.

Respectfully submitted,

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TIMOTHY G. QUINN,
Attorney at Law,
Attorneys for Respondent.

This 11th day of
May, 1977.

APPENDIX

QUESTIONS PRESENTED IN PETITIONER'S BRIEF IN THE S. C. SUPREME COURT

I

Did the Trial Court err in failing to dismiss all charges on the grounds that none of the charges involved transactions in which Appellant was acting as a Real Estate Broker and that such charges did not fall within the purview of the Statutes governing revocation of a Real Estate Broker's license? (Exception No. 1.)

II

Did the Trial Court err in considering as standards of conduct for the revocation of Appellant's Real Estate Broker's license, standards other than those set forth in Section 56-1545.16, S. C. Code of Laws, 1962, as amended? (Exception No. 2.)

III

Did the Trial Court err with respect to its findings and conclusions regarding the Ralph L. Smith transaction by finding Appellant guilty of certain misconduct with which he had not been charged nor given the opportunity to defend when the Trial Court had restricted the issues of the trial to the written charges made against Appellant and when there was no evidence to support such findings? (Exceptions No. 3, 4, 18, 19 and 20.)

IV

Did the Trial Court err in admitting in evidence the document identified as Affidavit of Lost Passbook, Plaintiff's Exhibit 5, when such document was not authenticated by any witness to its execution? (Exception No. 11.)

V

Did the Trial Court err with respect to the Edward W. Riser transaction by making findings of fact that were not supported by the record and by finding Appellant guilty of misconduct with which he was not charged and was not given notice or opportunity to defend? (Exceptions No. 10, 13, 18, 19 and 20.)

VI

Did the Trial Court err in failing to hold that the evidence conclusively showed that Appellant was not guilty of the charges made against him with respect to the Edward W. Riser transaction? (Exception No. 12.)

VII

Did the Trial Court err in regard to the Henry E. Ingram transaction by allowing Mr. Ingram to testify that Appellant orally agreed not to place any second mortgages on property conveyed from Mr. Ingram to Appellant in fee simple without any restrictions in the deed? (Exceptions No. 14 and 15.)

VIII

Was there evidence of a clear and convincing nature that the conveyance from Mr. Ingram to Appellant was not a fee simple conveyance but was a trust arrangement which Appellant fraudulently breached? (Exceptions No. 16, 17, 18, 19 and 20.)

IX

Did the Trial Court err in respect to its findings concerning the Lake Dogwood transaction by finding that the return of a $30,000.00 check for insufficient funds constituted such misrepresentations and false promises as to form a basis for revocation of Appellant's Real Estate Broker's license? (Exceptions No. 6, 7, 8, 18, 19 and 20.)

X

Did the Trial Court err in considering as evidence of misconduct the dishonor of four Five Thousand dollar checks when no charges had been made against Appellant with respect to such checks, and he had no notice or opportunity to defend such a charge? (Exception No. 5.)

XI

Did the Trial Court err in admitting in evidence the letters marked as Plaintiff's Exhibits 10, 11 and 12 over the objection that such letters were not properly authenticated and constituted hearsay evidence? (Exception No. 9.)